

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.3026 of 2016
Date of decision:5.4.2017**

Jatinder Parkash Goyal

...Appellant

Versus

Rajpal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.S.P.Soi, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment and decree dated 19.2.2016 passed by the learned Additional District Judge, whereby his first appeal was dismissed, upholding the impugned judgment and decree dated 21.3.2015 of the learned trial Court, dismissing the suit of the plaintiff for permanent injunction, unsuccessful plaintiff has approached this Court, by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of the impugned judgment, are that the plaintiff filed the suit for permanent injunction that he was owner in possession as a co-sharer of the residential house and shops detailed in the head note of the plaint to the extent of 17/800 share of land measuring 0 kanal 3-1/3 marlas, situated in the area of Sunam-A and the defendants may be restrained from alienating specific portion of the shops constructed on the front side and from delivering the possession to any person and from dispossessing the plaintiff without getting the suit property partitioned. It was mentioned in the plaint

that the land in dispute bearing khasra No.253//14min (0-17) was purchased by Satpal, Mangat Ram, Megh Raj, defendant No.1 Rajpal and Lachhman Dass sons of Sauni Ram, residents of Sunam from Gurmeet Singh son of Gurdev Singh and Charanjit Singh son of Mohinder Singh vide sale deed dated 02.02.1998. All the five brothers became cosharer to the extent of 1/5 share each. They jointly constructed residential house and shops. Two storeys of the building were constructed by them. Mangat Ram and Satpal sold their 1/5 share each out of land measuring 17 marlas to defendant No.2, who became co-sharer to the extent of 2/5 share, whereas defendant No.1 is a co-sharer to the extent of 1/5share. The plaintiff purchased the share of Megh Raj and became owner in possession of 1/5 share. The parties were co-sharers in joint possession of land measuring 17 marlas, which had not been partitioned. The defendants were out to sell the front portion where shops were constructed without getting the same partitioned. The plaintiff had 1/5 share in the front portion and the defendants had no right to alienate any specific portion of more value without getting it partitioned. The vendor of the plaintiff had also contributed equally in the construction of the building and the plaintiff has purchased his share for consideration and became a cosharer in the plot as well as building.

Upon service, defendants put appearance before the learned trial Court and filed their joint written statement, raising more than one preliminary objections, completely denying the averments taken by the plaintiff. Replication was filed by the plaintiff.

On completion of pleadings of parties, learned trial court

framed the following issues:-

1. Whether the plaintiff is entitled for the relief of injunction as prayed for?OPP
2. Whether the plaintiff has no locus standi to file the present suit?OPD
3. Whether the plaintiff has no cause of action to file the present suit?OPD
4. Whether suit is not maintainable in the present form?OPD
5. Relief.

In order to prove their respective stands taken, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff, being a co-sharer in the unpartitioned and joint property, was not entitled for the relief of permanent injunction against his other co-sharers. Accordingly, the suit of the plaintiff was dismissed by the learned trial Court vide impugned judgment and decree dated 21.3.2015. Plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court vide its impugned judgment and decree dated 19.2.2016. Hence this regular second appeal at the hands of the plaintiff.

Heard learned senior counsel for the appellant.

During the course of arguments, when learned counsel for the appellant was confronted as to how the suit for permanent injunction, at the hands of one co-sharer against his other co-shares of unpartitioned and joint property would be maintainable, learned counsel for the appellant had no

answer and rightly so, it being a matter of record. Again, when asked to explain as to why the plaintiff-appellant could not seek partition of the joint suit property by metes and bounds, instead of filing the present suit for permanent injunction against his other co-sharers, learned counsel for the appellant had no answer, this also being the undisputed fact situation.

Further, a bare reading of the impugned judgments and decrees passed by both the learned courts below will make it crystal clear that plaintiff-appellant miserably failed to prove his case, by leading cogent and convincing evidence. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, the learned first appellate court re-examined, considered and appreciated the true facts of case as well evidence available on record in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 14 and 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“The plaintiff while appearing as PW1 and his father Megh Raj while appearing as PW2 have deposed that they are residing on the first floor of the building constructed on the portion situated on the eastern side of the plot jointly purchased by the parties. Their evidence proves that the portion shown in brown colour in the site plan Ex.D1 is in possession of the plaintiff. The plaintiff has admitted that he and his father is in in possession of the first floor of the building for the last 08 to 10 years.

*PW2 Megh Raj has also admitted that on the ground floor, his brother Lachhman Dass is residing. He has also admitted that Mangat Ram and Satpal have no concern with the suit property. This portion of his cross-examination support the case of the defendants that Satpal and Mangat Ram have sold their share in favour of defendant No.2. This witness has alienated the shops situated in the front portion vide sale deed dated 31.05.2011 in favour of the plaintiff. Copy of this sale deed is in the summoned record. It is proved that neither the plaintiff nor his father PW2 Megh Raj are in possession of the shops in dispute. As stated earlier, the defendants had admitted that the affidavit Ex.P5 executed by his father Lala Sauni Ram also bears his signatures. It appears that though the partition deed dated 06.03.2007 was revoked vide this affidavit, but the parties remained in possession of the portions, which fell to their shares vide the partition deed. It has been held in **Jangir Singh Versus Naranjan Singh and others, 2015 (1) Civil Court Cases 315** that the suit for permanent injunction against the defendant, who is in exclusive possession of suit land as co-sharer is not maintainable and the plaintiff has equally efficacious remedy available as provided under Section 41 of the Specific Relief Act to seek partition of the suit land before appropriate forum. A similar law has been laid down in **Balwinder Singh Versus Gurcharan Singh and others, 2010 (4) Civil Court Cases 05** and **Karam Singh & Anr. Versus Lakhbir Kaur & Ors. 2011 (3) Civil Court Cases 162**. In view of the law settled in these rulings, the suit of the plaintiff against the defendants, who are in exclusive possession of the shops constructed in the front portion is not maintainable and the injunction prayed for cannot be granted in favour of the plaintiff. The plaintiff can seek partition of the property. I am of the considered opinion that the learned Lower Court has*

rightly held that the plaintiff is not entitled to the injunction as prayed for. I find myself in agreement with the finding of the learned Lower Court on issue No.1. The finding on this issue is affirmed. Since the suit of the plaintiff is not maintainable and the plaintiff has no cause of action to file this suit against the defendants and the finding on the remaining issues is also affirmed.

There is no denying the fact that appellant-plaintiff and defendant-respondent were co-sharers. It is settled proposition of law that injunction cannot be granted at the instance of one co-sharer against other co-shares until and unless the plaintiff specifically pleads and proves his exclusive possession to the complete ouster of his co-sharer. It is also not in dispute that under Section 41 (h) of the Specific Relief Act, 1963, an equally efficacious remedy was available to the plaintiff to seek partition of the joint suit property, before the appropriate forum, in accordance with law.

However, plaintiff-appellant, for the reasons best known to him, did not seek partition of joint suit property, by metes and bounds, before filing the instant suit for permanent injunction against his other co-sharers. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and this Court including two Full Benches judgments:-

1. *Shakuntala Vs. Lt.Col.Mukhtiar Singh and others, 2008 (11) SCC 422;*
2. *Sakhahari Parwatrao Karahale and another Vs. Bhimashankar Parwatrao Karalhe, 2002 (9) SCC 608;*
3. *Bhartu Vs. Ram Sarup, 1981 PLJ 204 (FB);*
4. *Ram Chander Vs. Bhim Singh and others, 2008(3) RCR (Civil) 685 (FB);*
5. *Ved Parkash Vs. Sunder and others, 2009 (1) CivCC 114;*
6. *Karam Singh and another Vs. Lakhbir Kaur and others, 2010 (5) RCR (Civil) 972;*
7. *Balwinder Singh Vs. Gurchara Singh and others, 2011 (7) RCR (Crl.) 47;*
8. *Jangir Singh Vs. Naranjan Singh and others, 2015 (1) RCR (Civil) 149.*

Relevant observations made by the Hon'ble Supreme Court in para 3 of its judgment in **Sakhahari Parwatrao Karahale's** case (supra), which can be gainfully followed in the present case, read as under:-

“Having given our consideration to the submissions raised by the learned counsel for the parties, we find, the High Court committed error in allowing the second appeal by setting aside the concurrent findings recorded by both the Courts below. The High Court held, even in the absence of any partition, there was family arrangement under which the plaintiff came in possession of the suit property. This finding of family arrangement is a new case taken by the High Court. Apart from partition, we do not find any pleading by the plaintiff of such a family arrangement. Not only there is no pleading, but no issues, no adjudication by any of the two Courts below. How can such a finding then be sustained? In the absence of this, once a finding is recorded there was no partition between the members of the Joint family, each

member of the joint family is co-sharer and possession of one is the possession for all. Even if there be exclusive possession of the plaintiff-respondent before partition it would be possession on behalf of all. Thus it cannot disentitle the defendant- appellant's claim against the suit property. In view of this it is inconceivable that injunction could be granted against another co-sharer of the joint Hindu property as has been done in the present case. Thus the findings recorded by the High Court, as aforesaid are unsustainable in law. We quash the impugned order of the High Court and confirm the findings recorded by both the Courts below. Accordingly, the present is allowed with costs."

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the

considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

5.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

